IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4489 OF 2007

1. Ramesh Vasantrao Desai,
   aged 56, occ: Business,
   residing at Nipani,
   Dist.Belgaum.
2. Sou.Bhagyarekha Ramesh Desai,
   Aged: 53, Occ.: Household,
   residing at Nipani, Dist.
   Belgaum. ... Petitioners.

Versus.

1. Pradeep Vasantrao Desai,
   Age: 50, Occ.: Business,
   resident of Nipani, Dist.
   Belgaum.
2. Smt.Ushadevi Vasantrao Desai,
   Age: 65, Occ.: Household,
   residing at Nipani, Dist.
   Belgaum.
3. Sou.Nalini Pradedep Desai,
   Age: 45, Occ.: Household,
   residing at Nipani, Dist.
   Belgaum.
4. Raj Ramesh Desai,
   Age: 27, Occ.: Agriculturist,
   residing at Nipani, Dist.
   Belgaum. ... Respondents.

Shri R.G.Ketkar i/by Shri R.S.Khadapkar for the Petitioners.

Shri A.M.Kulkarni for the Respondents.

CORAM : ABHAY S.OKA, J.

DATED : 20/21st June, 2007.

ORAL JUDGMENT.

1. I have heard the submissions of the learned Advocates appearing for the parties. By this writ

petition under Article 227 of the Constitution of India, the Petitioners have taken an exception to the order dated 24th April 2007 passed by the learned Principal District Judge at Sangli by which the Application made by the Petitioners under section 24 of the Code of Civil Procedure, 1908 (hereinafter referred to as "the said Code of 1908") has been rejected. The prayer made by the Petitioners in the said Application made before the learned Principal District Judge was for transfer of five connected suits pending in the Court of the learned Joint Civil Judge, Junior Division at Sangli to some other Court.

2. It will be necessary to refer to the facts of the case with a view to appreciate the submissions made by the learned Counsel appearing for the parties. It must be stated here that in Writ Petition No.7542 of 2003 by order dated 12th December 2003, the learned Judge of this Court directed expeditious disposal of one of the suits namely Reg.Civil Suit No.735 of 2000. This Court directed that the suit should be disposed of expeditiously and preferably within a period of six months from that date. It may not be necessary to go into the details of the merits of the suit. The case made out by the Petitioner is that the record of the pending suits is very bulky and there are large number of documents filed on record of the suits. According to

the case made out by the Petitioners, folders were provided for the purpose of keeping the papers of the suits and after arranging the documents in chronological order, the record of the suits was kept in the folders. It is case of the Petitioners that the Petitioners had made available a bag having a lock and key for the purpose of keeping the record of the suits safely.

3. According to the Petitioners, they realised that the contesting parties in the suits in collusion with staff members of the trial Court tampered with the record. According to the Petitioners certain documents were changed, certain documents were torn and many documents were mixed up. According to the Petitioners the said fact was brought to the notice of the learned trial Judge by an application made in that behalf. When the attention of the Court was brought to the said application, the suits were kept in the second session and in the second session, the Advocate appearing for the Respondents produced a document purporting to be a reply. It is stated that the said reply was not on record and a copy thereof was not provided to the Petitioners. It is alleged that without considering the merits of the said Application, the same was rejected by the trial Court.

4. It is further alleged in the application that

since the Petitioners have made a complaint against the members of the staff regarding tampering of the documents, the learned presiding Officer of the Court is prejudiced against the Petitioners. Therefore, an apprehension is expressed that the Petitioners may not get justice from the concerned Judge. Another ground pleaded is that an adjournment was sought by the Petitioners for filing an application for transfer and the adjournment was not granted by the learned trial Judge though a very valid ground for adjournment was made out.

5. The learned Counsel for the Petitioners has invited my attention to the impugned order passed by the learned Principal District Judge. He pointed out that the merits of the averments made in the transfer application are not at all considered. He stated that though the learned Judge was not himself certain, he has gone to the extent of observing that a possibility of paranoid tendency on the part of the Petitioners cannot be ruled out. He has invited my attention to the various complaints addressed by the Applicants to the District Court. He submitted that the same members of the staff against whom complaints of very serious nature have been made have been retained in the Court of the learned trial Judge. He stated that the learned trial Judge has not at all taken very seriously the complaints

of tampering which merit serious consideration. He submitted that considering the nature of allegations, it is a fit case for transfer of the suits to some other Court. The learned Advocate for the Respondents supported the impugned order.

6. I have carefully considered the averments made in the Application for transfer as well as the copies of various complaints annexed to this petition. The main allegation is that though the Applicants themselves had provided a separate bag for keeping the record of the suits, the original documents in the records have been tampered with. It is alleged that certain papers were removed from the record and certain papers have been either misplaced or torn. The Applicants have themselves stated that the learned trial Judge has directed that till the time the complaints made by the Petitioners are decided, the entire record of the suits shall be kept in the safe custody of the Nazir. The grievance made by the Applicants is that the concerned members of the staff against whom very serious allegations of tampering with the records have been made are still retained in the same Court and therefore, an application was made by the Petitioners praying that till the time the enquiry is in progress against the members of the staff, the hearing of the suit should not proceed.

7. So far as the tampering with the records is concerned, there are no allegations made against the learned Judge. All the allegations are directed against the members of the staff. Since the Petitioners have made complaint to the Registrar of this Court as well as to the learned Principal District Judge, it is obvious that the said complaints are bound to be looked into on the administrative side. After considering the complaints, the learned Principal District Judge will have to take appropriate decision if no such decision is taken till today.

8. It is now an admitted position that the record of the suits is kept in the safe custody of the Nazir. It is thus clear that as per the practice followed by the Civil Courts, the records will be brought before the Court only on the dates fixed for hearing of the suit. As pointed out earlier there is already a direction issued by this Court for expeditious hearing of the very suit. It is not possible to accept the submission that since the Petitioners have made complaints against the staff of the Court, the case should not proceed in the concerned Court so long as the said members of staff are not transferred elsewhere. Shri Ketkar tried to submit that there are large number of Applications pending in the said suit and the learned trial Judge is not

deciding the same. It must be stated here that this is not a ground on which the transfer is sought by the Petitioners. Another allegation made in the application is that though an adjournment was sought for the purpose of filing a transfer application, the learned trial Judge did not grant adjournment. The learned trial Judge cannot be blamed for that as there is an order passed by this Court for expeditious trial of the suits. Therefore, merely because the learned Judge did not grant adjournment is not at all a ground for transfer of the suits. It is also alleged that the learned Judge is prejudiced against the Petitioners, as they have filed complaints against the members of the staff of the Court. Except for the said bald allegation, nothing further is stated by the Petitioners in their application for transfer to substantiate the allegation against the learned Judge. A refusal to grant adjournment by itself is not a ground to conclude that the learned Judge is prejudiced against the Petitioners.

9. Shri Ketkar has made a grievance about the observation made by the learned Principal District Judge, which reads as under:

> "After perusing the relevant record and especially after hearing the arguments advanced by the learned Advocates for both the

> sides, though I am not certain, a possibility of paranoid tendency on the part of the Applicants cannot be ruled out."

There is some substance in the grievance made by the learned Advocate for the Petitioners as regards the aforesaid observation made by the learned Principal District Judge. However, the fact remains that even going by the averments made in the transfer application, the order of transfer could not have been passed.

10. There is no merit in the Writ Petition and the same deserves to be rejected. However, it needs to be clarified that the refusal of the District Court as well as this Court to pass an order of transfer shall not be construed as an expression of any opinion by this Court or the District Court on the merits of the complaints made by the Petitioners against the members of the staff. The nature of the allegations made by the Petitioners against the members of staff is very serious and it is expected that notwithstanding the order passed by this Court, the said complaints will be looked into on the administrative side. Subject to what is stated above, the Writ Petition is rejected.

11. It is made clear that till disposal of the suits, the record will be kept in the safe custody of

Nazir and the record will be taken to the concerned Court only when the concerned Court requires the same.

Judge.